

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORLANDO MINO HERNANDEZ, OSMEL RUBEN
SOSA NAJERA, RAFAEL BASURTO GOMEZ, JOSE
LUIS MENDEZ, MIGUEL MIRANDA and ROSALIO
PEREZ individually and on behalf of others similarly
situated,

20 Civ. 4457-RA

Plaintiffs,

DECLARATION OF
LUIGI MILITELO

-against-

LIRA OF NEW YORK INC (D/B/A LUKE'S BAR &
GRILL), LUIGI MILITELO, TOMMY TIN, JONATHAN
MATEOS, and LUIGI LUSARDI,

Defendants.

LUIGI MILITELO declares under the penalty of perjury pursuant to 28 U.S.C.
§ 1746 as follows:

1. I am the president and sole shareholder of defendant Lira of New York Inc., a New York corporation. I have personal knowledge of the facts contained in this Declaration, which I make in support of my motion, joined by defendants Tommy Tin and Jonathan Mateos, to dismiss the Complaint.

2. Lira of New York, Inc., operates a restaurant at 1394 Third Avenue, at 80th Street, under the trade name "Luke's Bar & Grill." Like every other restaurant in New York City that has managed to remain in business since February 2020, Lira has seen its gross revenue plummet as a result of the Covid-19 pandemic. Each of the plaintiffs left Lira's employ in early 2020. Finding themselves without work in a distressed sector and apparently ineligible for Covid relief funds, they have asserted claims under the Fair Labor Standards Act and the New York Labor Law against Lira; Lira's chef, Tommy Tin; one of Lira's waiters, Jonathan Mateos; and me.

3. According to plaintiffs' process server, Mr. Tin, Mr. Mateos, and I were served with process on September 13, 2021 by means of delivering the Summons and Amended Complaint to a person of suitable age and discretion at the restaurant then mailing those papers to each of us at the restaurant. Exhibit 20. Those statements are false. I receive and open all the mail at the restaurant. At no point in 2021 did the Summons and Amended Complaint in this case arrive in the mail at the restaurant addressed to me or to Mr. Tin or to Mr. Mateos.

4. According to plaintiffs' process server, Mr. Tin, Mr. Mateos, and I were again served with process on September 13, 2021 by this means:

Corporation or Partnership: By delivering a true copy of each to John Doe (Refused Name) personally. Deponent knew said corporation/partnership so served to be the corporation/ partnership described in said aforementioned document as said recipient and knew said individual to be manager thereof.

Exhibit 22.

5. This is gibberish. Neither Mr. Tin nor Mr. Mateos is a corporation or partnership, and neither am I. Each of us is a natural person. Nowhere in these affidavits does the process server claim to have delivered anything to any one of us.

6. Nowhere in these affidavits does the process server claim to have mailed anything to any one of us, and with good reason: he did no such thing. At no point in 2022 have the Summons and Amended Complaint in this case arrived in the mail at the restaurant addressed to me or to Mr. Tin or to Mr. Mateos.

7. According to these affidavits, the so-called "manager" was a brown-skinned male with black hair, age 36-50, standing 5'9" - 6'0" tall. Nobody fitting such a description is employed as a manager at the restaurant.

8. I also note that, according to these affidavits, the process server purported to serve “Memorandum Opinion and Order; First Amended Complaint.” There is no mention in these affidavits of the Amended Summons being served.

I declare the foregoing is true and correct.


Executed at New York, New York, March __, 2022.

LUIGI MILITELO

8. I also note that, according to these affidavits, the process server purported to serve "Memorandum Opinion and Order: First Amended Complaint." There is no mention in these affidavits of the Amended Summons being served.

I declare the foregoing is true and correct.

Executed at New York, New York, March 14, 2022.


LUIGI MILITELO